

CHAPTER 12. CLAIMS

1. GENERAL.

- a. Claims Under Cognizance of GAO and GSA. This chapter provides the procedures and administrative processes for the filing and examination of claims against the United States. It identifies the claims which must be adjudicated by the General Accounting Office and the General Service Administration (claims relating to transportation services) before payment is made or denied, and provides the procedures relating to those claims which may be paid. Claims as covered by this chapter, in contrast to regular billings and payments, deal with those demands for payment which involve cases of death, injury or damage, cases where payment was previously denied or disputed or cases where payment is in doubt by law or fact and adjudication is necessary. GAO's regulations on claims settlement are found in 4 CFR Parts 30 et seq. and Title 4, GAO Policy and Procedures Manual for Guidance of Federal Agencies. GSA's regulations are found in 41 CFR 101-41.6.
- b. Other Claims. In addition to claims under the jurisdiction of GAO and GSA, there are claims under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority. The significant areas and the paragraph reference where they are discussed in more detail in this chapter are as follows:
 - (1) Tort claims under the Federal Tort Claims Act (FTCA). See paragraph 14.
 - (2) Small Claims Act. See paragraph 15.
 - (3) Military Personnel and Civilian Employees' Claims Act of 1964, as amended. See paragraph 16.
 - (4) Irregularities and withholdings under the Davis-Bacon Act. See paragraph 17.

2. FILING CLAIMS.

- a. Forms. Claims should be presented in writing over the signature and address of the claimant or the claimant's authorized agent. Where a claim is filed by an agent it must be supported by a duly executed power of attorney or other documentary evidence of the agent's right to act for the claimant.

- (1) GAO jurisdiction. Generally, no particular form is required for filing a claim; however, in those specific classes of claims where forms are prescribed, they will be used by the claimant (4 CFR 31.2).
- (2) GSA jurisdiction. Claims relating to transportation services will be billed on S.F. 1113, Public Voucher for Transportation Charges, in the form of a supplemental bill (claim) bearing the same number as the original bill but with an alphabetical suffix. It is imperative that the claim be clearly stamped with the month, day and year of receipt so that there will be no question regarding the filing date (41 CFR 101-41.603-2).

b. Place of Filing.

- (1) GAO jurisdiction. Claimants should be advised to file their claims with DOT. Claims which cannot be disposed of by DOT will be sent to the Claims Group of GAO's Accounting and Financial Management Division. However, when the statutory period of limitation is about to expire (see paragraph 3 below), claims should be filed directly with GAO, addressed to:

Claims Group, Accounting and Financial Management
Division,
U.S. General Accounting Office
Washington, D.C. 20548

- (2) GSA jurisdiction. Transportation claims generally should be filed with DOT. If that is not feasible, the claim should be sent to the General Services Administration (BWCA), Washington, D.C. 20405. Claims involving collection actions resulting from GSA's transportation audit function must be filed directly with GSA (BWCA). If the claim is filed with DOT, the claim should be sent to the payment office shown in the "Bill Charges To" box of the procurement document (41 CFR 101-41.602).

3. STATUTORY LIMITATIONS ON FILING OF CLAIMS.

a. GAO Jurisdiction.

- (1) General. 31 USC 3702, informally known as the "Barring Act," provides a six-year statute of limitations on the filing of claims cognizable by GAO. 31 USC 3702 expressly exempts claims by "any State, Territory, possession or the District of Columbia." The exemption for claims by a State does not extend to claims by a city, county, or other political subdivision (Comp. Gen. decisions B-159110, 6/27/66; B-199838, 10/20/81). The Barring Act is limited to claims cognizable by GAO under 31 USC 3702.
- (2) DOT procedure for handling barred claims. The operating administration should inform claimants that GAO will determine their claims to be barred under 31 USC 3702 if six years have elapsed since the claim accrued, and the claim has never been considered by GAO. Claimants should not be told by DOT that their claim is barred since that authority vests solely in GAO. However, GAO has requested that we send a letter informing the claimant that GAO will determine the claim to be barred unless it was received by GAO within the six-year limit. A copy of the Barring Act may be included in the letter. The claimant should be told that filing a claim with an agency of the Government other than GAO does not satisfy the requirements of the Act, and the Barring Act has no exceptions and may not be waived (GAO circular letter B-198712, July 29, 1980).
- (3) Check claims. All claims on account of any check or checks appearing to have been paid from the records of the Treasury Department or GAO shall be barred if not presented to the Treasurer of the United States or GAO within six years after the date of issuance of the check or checks involved (31 USC 3702 (c)).
- (4) Other statutory limitations. It is incumbent on claimants to inform themselves regarding other possible statutory limitations (4 CFR 31.5(c)).

b. GSA Jurisdiction.

(1) General. 31 USC 3726, as amended, imposes a limitation, generally three years, on the filing of claims cognizable by GSA when such claims involve charges for transportation within the purview of 31 USC 3726. These claims involve transportation charges based on tariffs lawfully on file with Federal and State transportation regulatory agencies or which involve rates, fares and charges established under section 10721 of the Revised Interstate Commerce Act (49 USC 10721).

(2) Determination of timing for three-year limitation. A claim must be received by GSA or the DOT administration out of whose activity the claim arose within three years from whichever is the latest of the following dates:

- (a) Accrual of the cause of action thereon;
- (b) Payment of charges for the transportation involved;
- (c) Subsequent refund for overpayment of such charges; or
- (d) Deductions made under 31 USC 3726.

4. CLAIMS WHICH MUST BE SUBMITTED TO GAO. The following classes of claims may not be paid or denied administratively but must be forwarded to the Claims Group, Accounting and Financial Management Division, General Accounting Office, for adjudication:

- a. Claims in excess of \$25.00 which involve doubtful questions of law or fact, except those which have been the subject of an advance decision of the Comptroller General, in which case a reference to the decision must appear on the voucher supporting the payment. Claims are doubtful when a reasonably prudent person having responsibility for administrative action is unable to decide positively that they are or are not payable. (See Chapter 1, par. 4e for doubtful claims of \$25 or less.)
- b. Claims, regardless of doubt, which are required by statute, by regulations, or by decision of the Comptroller General to be settled in the General Accounting Office before payment is made or denied.

- c. Reclaims of items in excess of \$25 previously denied by DOT, unless it is determined administratively that the action taken was in error and can properly be corrected by DOT.
 - d. Supplemental claims for amounts which have been administratively deducted from transportation payment vouchers in connection with loss and/or damage to property (41 CFR 101-41.604-2(a)).
5. TRANSPORTATION CLAIMS WHICH MUST BE SUBMITTED TO GSA. The following types of transportation claims will not be paid by the Department but will be forwarded to the General Services Administration (BWCA) Washington, D.C. 20405:
- a. Any claim that is "time barred" by a statute of limitations as indicated in paragraph 3b above or any claim on which there is doubt as to whether it is "time barred."
 - b. Any claim that refers to a GSA file number or to a previously paid amount which is not in agreement with the administration's record of prior payment.
 - c. Any claim that involves inbound rail transit bills not properly certified to the effect that the tonnage is still on hand at the transit station.
 - d. Any claim that is not payable because the Department lacks reproducible photographic copies of the original payment documents.
6. SUBMISSION OF CLAIMS TO GAO.
- a. All claims which are forwarded to GAO for adjudication must be accompanied by an administrative report containing:
 - (1) A statement of the facts from which the claim arose;
 - (2) A statement of the doubt or other reason for forwarding the claim;
 - (3) A recommendation as to the disposition believed to be proper;
 - (4) A citation to pertinent supporting documents such as contracts and vouchers, if any;
 - (5) A statement that the claim has not been paid and will not be paid except pursuant to certification in the name of the Comptroller General;

- (6) A complete symbol citation to the applicable appropriation or fund; and
 - (7) The identification number of the claimant. If the claimant is an individual the identification number to be used is the Social Security Number. If the claimant is a business entity, the number to be used is the Employer's Identification Number (EIN) which corresponds to the Social Security number of an individual.
- b. The claimant should be informed that the claim has been sent to GAO for adjudication. Do not include information on DOT's recommendation in the notice. Advise the claimant that information about the claim can be obtained by writing to the Claims Group, GAO.

7. SUBMISSION OF CLAIMS TO GSA.

- a. All claims forwarded to GSA shall be supported with:
- (1) Appropriate certification of factual matters not considered in previous certifications;
 - (2) Administrative report of any pertinent information not previously furnished;
 - (3) A recommendation of the action to be taken;
 - (4) Citations to previous payments, if any, by reference to disbursing office (D.O.) voucher number, date of payment, and D.O. symbol number; and
 - (5) Citations to applicable appropriation or fund accounts.
- b. The administration shall notify claimants of the dates on which their claims are forwarded to GSA but shall not inform them of administrative recommendations.

8. GAO CLAIM SETTLEMENT PROCESS.

- a. Precedents for Future Payments. Settlement of an individual claim by GAO is not to be regarded as a precedent for the guidance of accountable or other administrative officers.

- b. Liability of Certifying and Disbursing Officers. Certifying and disbursing officers will not be held pecuniarily liable for payments made as a result of claims settled by GAO, which appear regular on their face, except that they will not be relieved of the responsibility, where required, for determining that a sufficient balance exists in the appropriation or fund to cover the payments.
- c. Form of Claim Settlement.
 - (1) Allowed claims. GAO will certify claims for payment either by use of GAO Form 39, Certificate of Settlement, or by certificate of allowance placed on the voucher if GAO has approved this method (see 4 GAO 8.3).
 - (2) Disallowed claims. When part of the claim is allowed and part disallowed, a statement relating to the disallowed portion will be included on the GAO Form 39 or the voucher. When the full amount of a claim is disallowed, the claimant will be advised by issuance of GAO Form 44, Settlement Certificate.
- d. Processing Claim Settlements.
 - (1) Allowed claims. GAO will forward the GAO Form 39 to the operating administration under a covering transmittal letter. A copy of the transmittal letter will be promptly receipted and returned to GAO's Claims Group. The settlement document should not be reviewed for legality or correctness. However, alterations may be made to reflect the current year of the appropriation symbol and to correct project numbers or other information in connection with the appropriation or fund stated. No alteration will be made which will cause payment from a different appropriation, to a different payee, or in an amount different from that approved by GAO. Schedule the GAO Form 39 for payment in the usual manner. The claimant's copy of the GAO Form 39 will be forwarded to the disbursing officer for transmittal to the payee with the check issued. An SF 1096, Schedule of Voucher Deductions, will be prepared when applicable. GAO provides two other copies of the settlement certificate for your administrative use.

- (2) Debt application. When all or part of the amount allowed is withheld for application toward a debt due the United States, GAO will provide additional copies of the settlement certificate for forwarding by the disbursing officer to the agency whose account is being credited. When the full amount is withheld, GAO will forward the settlement certificate to the claimant.
- (3) Disallowed claims. When a claim is disallowed in full, GAO will send the GAO Form 44 direct to the claimant. One copy of the disallowance will be sent to the operating administration concerned.

e. Reconsideration of Settlement.

- (1) Request review. Claims previously settled by GAO will be reviewed by GAO at the discretion of the Comptroller General upon written application of a claimant whose claim has been settled or the Secretary of DOT, or upon motion of the Comptroller General at any time.
- (2) Basis for review. Application for review of claim settlements must state the errors which the applicant believes have been made in settlement and which form the basis of the request for reconsideration.
- (3) Return of check with request for review. Unless otherwise directed by the Comptroller General on presentation of proper facts, the check issued in settlement must not be cashed when its amount includes any item to which the review applies but must accompany the application for review.
- (4) Protests received against GAO settlements. Any protests or appeals received by DOT from settlements made by GAO, or additional claims requiring reconsideration of such settlement, will be referred to the Claims Group of GAO. The prior claim will be cited and an additional administrative report will be furnished as necessary in accordance with provisions of paragraph 6 of this chapter.

9. GSA CLAIM SETTLEMENT PROCESS.

- a. Acknowledgement. Each claimant is informed of the number assigned to the claim upon its receipt in GSA.
- b. Finality of Action. Claimants may request reconsideration or review of GSA's settlement action. However, DOT will consider GSA's settlement actions as the final administrative action.
- c. Precedent for Future Payments. A GSA claims settlement is not to be regarded as a precedent for agency determination of future payments by accountable or other administrative officers.
- d. Form of Claim Settlement.
 - (1) Allowed claims. GSA certifies each payable claim by use of GSA Form 7931, Certificate of Settlement, and includes a complete explanation of any part of the claim disallowed.
 - (2) Disallowed claims. When a claim is wholly disallowed, GSA furnishes the claimant GSA Form 7932, Settlement Certificate, which explains the disallowance. One copy of the GSA Form 7932 is furnished the applicable operating administration.
- e. Processing Claims Certified for Payment.
 - (1) GSA transmittal. GSA forwards the original and four copies of each certificate of settlement to DOT by GSA Form 7933, Certificate of Settlement Transmittal. A copy of the transmittal form should be promptly receipted and returned to GSA (BWCA). At the same time, GSA also forwards an advance copy of the settlement certificate to the claimant.
 - (2) Debt setoff. When an amount of the settlement is to be set off to recover a debt due the United States from the carrier, effect such action immediately to preclude the setoff from being barred by expiration of the applicable statutory time period (there is a three year limitation on deductions of overcharges for amounts due any carrier of forwarder). See 41 CFR 101-41.501. When a setoff amount is to be credited to accounts of other agencies, GSA will supply additional copies of the settlement certificate.

- (3) Alteration of GSA Form 7931. No action will be taken to revise or alter the settlement certificate except to indicate the appropriation symbol applicable at the time of payment or to correct subsidiary references. No other changes are permitted. Any settlement certificate that cannot be processed will be returned to GSA (BWCA) with an explanation of the nonpayment.
- (4) DOT action. Action will be taken to process payment and the following distribution of the certificate of settlement will be made:
 - (a) Forward the original of the certificate, with the D.O. voucher number and date of payment stamped in the upper right corner, to GSA (BWAA/C). If required, an SF 1096, Schedule of Voucher Deduction, will be prepared.
 - (b) Forward the claimant's notice copy to the disbursing officer for forwarding to the payee along with the settlement check.
 - (c) If applicable, forward a copy of the certificate of settlement to each agency whose accounts are to be credited with a withheld amount.
 - (d) Retain the remaining copies for internal accounting records.

When the full amount is set off, GSA forwards both the advance copy and the notice copy of the certificate to the claimant and forwards the original and accounting copies to the operating administration for processing and return of the annotated original certificate to GSA (BWAA/C). If the setoff amount is to be charged and credited to the same appropriation, GSA sends only the accounting copies to DOT.

10. CLAIMS FOR AMOUNTS DUE DECEASED CIVILIAN EMPLOYEES.

- a. General. These claims represent amounts for unpaid compensation due on account of services performed by the decedent for DOT, including the proceeds of undelivered and unnegotiated checks. Detailed procedures, including prescribed forms and definitions are contained in 4 CFR Part 33. Treasury Department instructions will be found in 1 TFRM 3-2085.

- b. GAO Role. The following type claims must be sent to GAO's Claims Group for settlement:
- (1) When doubt exists as to the amount or validity of the claim.
 - (2) When doubt exists as to the person(s) properly entitled to payment.
 - (3) When the claim involves uncurrent checks (See 4 CFR 33.6c(3)).
- c. Claim Forms. The claimant will file the claim on either SF 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee, or SF 1155, Claim for Unpaid Compensation of Deceased Civilian Employee (No Designated Beneficiary or Surviving Spouse). When the designated beneficiary is the estate of the decedent, the claim will be filed on SF 1055, Claim Against the United States for Amounts Due in the Case of a Deceased Creditor. For claims involving minors or incompetents, see 4 CFR 33.8 for additional supporting data needed. The disbursement voucher for these claims will be SF 1154 and SF 1154a (Memorandum), Public Voucher for Unpaid Compensation Due a Deceased Civilian Employee.
- d. Voucher Preparation. Upon receipt of the claim (SF 1153 or SF 1155) the operating administration will prepare a disbursement voucher for the unpaid compensation due the deceased civilian employee. The SF 1154 and SF 1154a will be used for this purpose in accordance with 4 GAO 23. A detailed description on the preparation of the subvoucher in support of the SF 1154 can be found at 1 TFRM 3-2085.20, .30, and .40. Each of the forms used will be signed by a designated approving officer and will show the amount chargeable to the appropriation or fund. The SF 1154 will be forwarded or scheduled to the disbursing officer for payment as are other disbursement vouchers.

- e. Vouchers for Transmittal to GAO. For payments which can only be made after settlement by GAO (see paragraph 10b above), the SF 1154 will be transmitted to the Claims Group, Accounting and Financial Management Division, U.S. General Accounting Office, Washington, D.C. 20548. The subvouchers and the completed application form (SF 1153, SF 1155, or SF 1055) should be attached to the original SF 1154. In addition, the voucher should be accompanied by an administrative report containing: (1) a statement of the doubt involved, if any; (2) any pertinent administrative findings and recommendations; and (3) a statement that the claim has not been paid and will not be paid except pursuant to certification in the name of the Comptroller General.
- f. Basic Examination. Prior to payment determine that:
 - (1) The claimant(s) listed on the SF 1154, Public Voucher for Unpaid Compensation Due a Deceased Civilian Employee, is entitled to receive the unpaid compensation in accordance with the designation by the deceased employee or the laws of the applicable State.
 - (2) All required supporting subvouchers and documents are attached.
 - (3) Computations of amount due as shown on the subvouchers and on the reverse side of SF 1154 are correct, and net amount due is correct and properly distributed.
 - (4) Proper appropriations are charged.

11. CLAIMS FOR AMOUNTS DUE DECEASED MILITARY MEMBERS.

- a. General. These claims represent amounts for unpaid compensation due a member on account of services performed by the decedent for DOT, including the proceeds of undelivered and unnegotiated checks. Detailed procedures, including prescribed forms and definitions are contained in 4 CFR Part 34 and 4 GAO 25 thru 33.
- b. GAO Role. The role of GAO is the same as stated in paragraph 10b above.
- c. Claim Forms. The following claim forms are prescribed by GAO:
 - (1) SF 1174 - Claim of Designated Beneficiary for Unpaid Pay and Allowances of Deceased Members of the Armed Forces.

- (2) SF 1175 - Claim for Unpaid Pay and Allowances of Deceased Member of the Armed Forces (No Designated Beneficiary).
 - (3) For claims involving minors or incompetents, see 4 CFR 34.5 for additional supporting data needed.
 - (4) The disbursement voucher for these claims will be SF 1176 and SF 1176a (Memorandum), Public Voucher for Unpaid Pay and Allowances Due a Deceased Member of the Armed Forces.
- d. Voucher Preparation. Upon receipt of a claim, promptly prepare a disbursement voucher, SF 1176 and SF 1176a (Memorandum), for the amount of the pay and allowances due the deceased member, including the proceeds of unnegotiated checks. The disbursement voucher should be supported by:
- (1) The original claim, SF 1174 and SF 1175;
 - (2) Appropriate documentation relating to any amounts included on the voucher, such documentation to be on forms approved for such purpose and used as subvouchers;
 - (3) An official copy of the death report; and
 - (4) A certified copy of the designation of beneficiary forms, when a beneficiary has been designated, if the name and address of the beneficiary as shown on the form do not appear on the death report.
- The SF 1176 will be forwarded individually or scheduled for payment in the same manner as other disbursement vouchers. The applicable documents and subvouchers will be retained with the Military Pay Record or other appropriate pay account at the location where the audit by GAO will be performed.
- e. Voucher for Transmittal to GAO. For vouchers which can only be paid after settlement by GAO (see paragraph 11b above), the voucher will be submitted to the Claims Group, Accounting and Financial Management Division, U.S. General Accounting Office, Washington, D.C. 20548. The voucher will be accompanied by a copy for notice to each claimant, one copy for retention by GAO's Claims Group, and a sufficient number of copies to support administrative and accounting records (in no event will the original voucher be accompanied by less than two copies).

In addition, an administrative report similar to the one described in paragraph 10e above will accompany the voucher. After certification by GAO, the voucher will be returned to DOT under a covering transmittal letter. A copy of the transmittal letter will be receipted and returned to GAO's Claims Group. DOT will be responsible for forwarding each claimant's notice copy to the disbursing officer for transmittal to the payee with the check.

12. CLAIMS FOR AMOUNTS DUE DECEASED PUBLIC CREDITORS.

- a. General. These claims represent amounts alleged to be due the estate of a deceased individual public creditor, including the proceeds of undelivered and unnegotiated U.S. Government checks, for supplies furnished or services rendered.
- b. Claimants. The amount due at the time of death is paid to the person(s) surviving at the date of death under the laws of the domicile of the decedent.
- c. Settlement Authority. Claims where there is no doubt as to the amount or validity of the claim or where there is no doubt as to the person(s) entitled to payment may be settled by DOT. If there is doubt as to the amount, validity, or person(s) entitled to payment, the claim shall be sent to the Claims Group, GAO, for settlement. In addition, an administrative report will accompany the claim containing the information required by 4 GAO 39.2.
- d. Documentation. SF 1055, Claim Against the United States for Amounts Due in the Case of Deceased Creditor, is used to claim amounts alleged to be due, including the proceeds of unnegotiated and undelivered U.S. Government checks. The SF 1055 should be supported by:
 - (1) SF 1185, Schedule of Undeliverable Checks for Credit to Government Accounts.
 - (2) A short certificate of the court showing the appointment and qualifications of a guardian claiming for a minor.

- (3) A statement to support a claim where no guardian has been appointed for a minor showing:
 - (a) Claimant's relationship to the minor, if any;
 - (b) The name and address of the person having care and custody of the minor;
 - (c) That any payments received will be applied to the use and benefit of the minor; and
 - (d) That the appointment of a guardian is not contemplated.
- (4) Receipted bill of the undertaker if the funeral expenses have been paid (Item 5 on SF 1055).

e. Basic Examination. Upon receipt of SF 1055 determine that:

- (1) The claimant is the person(s) entitled to the proceeds and all parts of the SF 1055 are complete.
- (2) The amount claimed is the total of all unpaid vouchers and proceeds due from undelivered and unnegotiated checks.
- (3) Required supporting vouchers and certificates are attached.
- (4) The claim can be paid locally or whether there is some doubt as to the amount, validity, or person(s) entitled to the amount due and the claim has to be submitted to GAO for settlement.
- (5) The proper appropriation is shown.

13. CLAIMS FOR AMOUNTS DUE INCOMPETENT PUBLIC CREDITORS.

- a. General. These claims represent amounts due incompetent public creditors of the United States, including claims for proceeds of undelivered or unnegotiated Government checks drawn on the Treasury of the United States. The term "incompetent" refers to a person who has been adjudged by a court to be incompetent to handle their own affairs. The procedures for settlement are found in 4 CFR 36 and 4 GAO 40.

- b. Settlement Authority. Claims may be settled by DOT where there is no doubt as to the amount or validity of the claim or where there is no doubt as to person(s) entitled to payment. If there is doubt as to the amount, validity, or person(s) entitled to payment, the claim shall be sent to the Claims Group, GAO, for adjudication.
- c. Documentation. No specific form is used in filing claims for sums due incompetent creditors of the United States. Such claims must be in writing over the signature and address of the person claiming on behalf of the incompetent creditor. It must set forth the connection of the incompetent creditor with DOT. The claim should be supported by:
 - (1) SF 1185, Schedule of Undeliverable Checks for Credit to Government Accounts;
 - (2) A short certificate of the court showing the claimant's appointment and qualifications as guardian or committee. Subsequent claims for recurring payments must be supported by a statement that the appointment is still in full force and effect; and
 - (3) A statement where no guardian is appointed showing:
 - (a) Claimant's relationship to the incompetent, if any;
 - (b) The name and address of the person having care and custody of the incompetent;
 - (c) That any amount paid to the claimant will be applied to the use and benefit of the incompetent; and
 - (d) That the appointment of a guardian or committee is not contemplated.
- d. Basic Examination. Upon receipt of the claim determine that:
 - (1) The claimant is the person entitled to the proceeds.
 - (2) The amount claimed is the total of all unpaid vouchers and proceeds due from undelivered and unnegotiated checks.
 - (3) All required supporting vouchers and certificates are attached.

(4) The claim should be paid locally or should be submitted to GAO for settlement.

(5) The proper appropriations and funds are charged.

14. CLAIMS UNDER FEDERAL TORT CLAIMS ACT.

- a. Background. Under the doctrine of sovereign immunity, the Government cannot be sued without its consent, and, prior to 1946, was therefore not liable for the tortious conduct of its employees. Congress rectified this situation in 1946 with the enactment of the Federal Tort Claims Act (FTCA). The Act has been amended a number of times over the years and is now found at 28 USC 1346(b) and 2671-2680. 28 USC 2672 authorizes the administrative settlement of tort claims by the agency whose employee committed the tort. The Act states that the Attorney General will prescribe the regulations. These regulations are found at 28 CFR 14. GAO has no jurisdiction to settle claims under the FTCA except for claims involving GAO employees.
- b. General. These claims represent monetary damages for damage or loss of property, or personal injury, or death by the negligent, or wrongful act or omission of a DOT employee while acting within the scope of his/her office or employment.
- c. Statute of Limitation. A tort claim is "forever barred" unless presented in writing to the appropriate agency within two years after the claim accrues or unless suit is brought within six months after the date of mailing of the agency's final denial (28 USC 2401(b)).
- d. Filing of Claim. A claim shall be deemed to have been presented when the Department receives from a claimant, his/her duly authorized agent or legal representative, an executed SF 95, Claim for Damage or Injury, or other written notification of an incident, accompanied by a claim for money damages for damage to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. If the claim should have been presented to another Government agency it should be immediately transferred to the appropriate agency. The claim may be amended by the claimant any time prior to final DOT action.
- e. Evidence to be Submitted With Claim. 28 CFR 14.4 contains a detailed list of evidence required in support of claims based on death, personal injury, and property damage. The voucher examiner should determine that the required evidence is submitted with the claim when processing the voucher for payment.

f. Limitation on Agency Authority.

- (1) Monetary limitation. There is no monetary limit on DOT's administrative settlement authority under 31 USC 2672 except that awards in excess of \$25,000 require the prior written approval of the Attorney General or the Attorney General's designee. This request should be directed to the Assistant Attorney General, Civil Division, Department of Justice.
- (2) Review by legal officers. When a proposed settlement, award, or compromise exceeds \$2,500, it must be reviewed by a legal officer of the Department before final action (28 CFR 14.5).

g. Action on Approved Claims. SF 1145, Voucher for Payment Under Federal Tort Claims Act, is used to pay claims regardless of the amount. Steps to be taken depend on the amount of the approved claim.

- (1) Awards of \$2,500 or less. If the award is \$2,500 or less to each claimant, the award will be paid out of any DOT appropriation available and current at the time of final action and which is not specifically proscribed or limited (38 Comp. Gen. 338, 340). After the claim has been approved for payment, the responsible administrative officer shall forward the SF 1145 (with as many copies as needed) to the accounting officer for certification and payment. The accounting officer will coordinate his action with the applicable budget officer for determination of the appropriation to be charged. If no appropriations are available for obligation within the applicable operating administration, then the Departmental Office of Budget (B-20) should be requested to assign any available DOT appropriation. The SF 1145 will be signed by the claimant and the responsible administrative officer or designee. The voucher should be supported by the original claim, supporting documentation, any settlement agreements or releases executed by the claimant, and the final adjudication.

- (2) Awards in excess of \$2,500. Awards in excess of \$2,500 are paid, upon certification by GAO, from the permanent indefinite appropriation established by 31 USC 1304. The SF 1145, properly executed and certified, will be forwarded to the Claims Group, GAO. When an award is in excess of \$25,000, the SF 1145 must be accompanied by evidence that it has been approved by the Attorney General or his designee (28 CFR 14.10).

- h. Finality of Payment. Acceptance by the claimant of the payment shall be final and conclusive and shall constitute a complete release of any claim against the United States and against the employee whose act or omission gave rise to the claim.

15. SMALL CLAIMS FOR PRIVATELY OWNED PROPERTY DAMAGE OR LOSS.

- a. General. The Small Claims Act (31 USC 3723) is a vehicle for the administrative settlement of negligence claims for privately owned property damage or loss not exceeding \$1,000 which are not cognizable under the Federal Tort Claims Act nor covered by any other statute. For example, the Comptroller General has recognized the Small Claims Act for claims arising in a foreign country. (Comp. Gen. decision B-120773, March 22, 1955). Claims under the Small Claims Act are beyond GAO's settlement jurisdiction and are settled by the cognizant agency (3 Comp. Gen. 22, 24).
- b. Statute of Limitations. A claim may not be considered unless presented to the head of the agency within one year after it accrues (31 USC 3723(b)).
- c. Payment. DOT appropriations cannot be used to pay awards under the Small Claims Act. These awards are payable, upon certification by GAO, from the permanent judgement appropriation and only if the claimant accepts the settlement in complete satisfaction of the claim against the Government (31 USC 3723(c)). The procedures contained in 4 CFR 31 should be followed.

16. PERSONAL PROPERTY CLAIMS.

- a. General. These claims relate to personal property lost or damaged incident to service with DOT. The Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 USC 3721) authorizes the Department to settle these claims. Although the Act authorizes the President to prescribe uniform

policies to implement the statute, this authority has not been exercised. As a result, each department and agency must determine its own policies subject to the statutory criteria. In DOT, the policies and procedures are contained in DOT 2770.9A, Employee Claims Manual.

- b. Conclusiveness of Settlement. DOT's settlement of a claim under the Act is "final and conclusive." Settlement includes full or partial allowance or disallowance. GAO has no jurisdiction to settle claims under the Act (except for GAO employees) as long as the settlement was made in accordance with statutory criteria and DOT 2770.9A. Judicial review has been held to be not available. In addition, a certifying officer will not be held liable for an erroneous determination made by the Department (B-185497, 8/6/76).
- c. Monetary Limitations.
 - (1) With the exception of subparagraph (2) below, the maximum settlement authority is \$25,000 (for claims covering an incidence that occurred before July 28, 1982, the limit is \$15,000, P.L. 97-226, 7/28/82). The claim may be paid in money or the personal property replaced in kind.
 - (2) An amendment to the Act (P.L. 96-519) authorizes the settlement of claims for loss or damage to personal property in a foreign country up to \$40,000 if the loss or damage (1) was incident to an evacuation of United States personnel in response to political unrest or hostile acts, or (2) resulted from acts of mob violence, terrorist attacks, or other hostile acts. Upon payment of such a claim, the United States becomes subrogated to the claimant's rights against the foreign country. Funds may be obligated or expended (under the authority granted by P.L. 96-519) only to the extent provided in advance in an appropriation act.
 - (3) No claim will be accepted for less than \$10 (paragraph 3, Chapter 2, DOT 2770.9a).
- d. Time Limitation. All claims must be presented in writing within two years after the claim accrues unless war or armed conflict intervenes, in which case if good cause is shown, the claim may be presented not later than two years after the cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier.

- e. Forms. Claims will be submitted on DOT F 2700.6, Employee Claim for Loss or Damage to Personal Property. Payment of the claim will be made on DOT F 2700.5, Voucher for Payment Under Military and Civilian Employees Claim Act.
- f. Approving Authority. The authority to settle and pay claims has been delegated to the Assistant Secretary for Administration and Heads of Operating Administrations. The authority may be redelegated to office directors, regional directors, district commanders or other comparable levels and to those individuals who report to the above officials (Paragraph 4, Chapter 1, DOT 2770.9A).
- g. Filing of Claim. The DOT F 2700.6 will be submitted in an original and one copy to the designated claim investigator. Specific instructions are contained in paragraph 5, chapter 2, DOT 2770.9A.
- h. Processing Claim. Detailed procedures for processing claims are included in Chapter 3, DOT 2770.9A. When the designated official approves all or part of the claim, the official will initiate the payment voucher (DOT F 2700.5). Following certification by the claimant and approval by the designated official, the voucher and all supporting documentation will be forwarded to the servicing accounting office. The voucher examiner should determine that the forms (DOT F 2700.5 and 2700.6) have been signed and that the approving official has been delegated such authority. The voucher should then be paid in the normal manner. As noted in paragraph 1b above, the Comptroller General has ruled that a certifying officer will not be held liable for an erroneous determination made by the approving official.

17. IRREGULARITIES AND WITHHOLDINGS UNDER THE DAVIS-BACON ACT.

- a. General. These claims relate to amounts due contractor employees for alleged violations of the Davis-Bacon Act. They must be sent to the GAO for settlement and payment based on reports and evidence furnished by DOT. Account 05X6022 is established within GAO into which collections for wage underpayments will be deposited. Therefore any contract funds forwarded to GAO will be deposited to that account (4 GAO 49).
- b. Administrative Report. The administrative report should include both accounting data and all evidence upon which the determinations and recommendations are based and the written negotiations with the contractor.

- c. Comprehensive Report. Comprehensive reports should be submitted in instances where there is a disregard of obligations to employees. The failure to withhold moneys for wage underpayment, or the fact that wage underpayments have been corrected, does not preclude furnishing factual reports. This report should include the following essentials:
- (1) A description of the nature and extent of irregularities and the evidence establishing their existence;
 - (2) A chronological narration of the facts;
 - (3) A copy of any investigative report and exhibits, including payrolls submitted to the Government and other pertinent evidence;
 - (4) Copies of correspondence showing administrative action with respect to the exaction of compliance and actions taken or explanations proffered by offenders;
 - (5) Any additional information, evidence or recommendations believed to be useful in GAO determinations; and
 - (6) A certification that the wage underpayments have been corrected by the contractor or subcontractor if the contractor has made the payment to the satisfaction of DOT.
- d. Withholding Procedures. Withholding should be made as a matter of insuring that full wages will be paid in questionable instances, prior to collection action, since GAO does not make adjustments with employees until contractors have refused to comply with the determinations. Collection action shall not be taken until it can be shown that all controversies have been finally settled and that the contractors cannot or will not themselves discharge their obligation to the employees in full.
- e. Disposition of Collections. When collections have been made, SF 1093, Schedule of Withholdings Under the Davis-Bacon Act, shall be forwarded with the check payable to the Claims Group, General Accounting Office. The SF 1093 shall be supported by a schedule showing the names of employees, their current address, social security numbers, dates and hours worked, classifications and rates required to be paid, together with

any claims received from the employees. These withholdings from contractors for alleged wage underpayments will be deposited by the General Accounting Office to deposit fund account 05X6022. These amounts will be available for settlement by GAO when making payment to aggrieved employees.

- f. Submission of Contractor Employee Claims. The contractor employee claims should be forwarded to the General Accounting Office, supported by the documentation enumerated in paragraph 17e of this Chapter.
- g. Basic Examination. Verify that:
 - (1) Claim is supported by appropriate documentary evidence and reports.
 - (2) SF 1093 and schedule of underpayments are submitted when collection action has been taken.